



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2023-0215; FXES1111090FEDR-245-FF09E21000]

RIN 1018-BH68

Endangered and Threatened Wildlife and Plants; Revision of the Critical Habitat Designation for the Jaguar in Compliance with a Court Order

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order to vacate Subunit 4b and a portion of Unit 3 in Arizona from the March 5, 2014, final rule designating lands in Arizona as critical habitat for the jaguar (*Panthera onca*) under the Endangered Species Act of 1973, as amended (Act). In compliance with the court order, this final rule removes approximately 64,797 acres (26,222 hectares) of land within Arizona from the designation of critical habitat for the jaguar. The remaining total acreage of designated critical habitat for the jaguar is approximately 640,124 acres (259,049 hectares) in Pima, Santa Cruz, and Cochise Counties, Arizona.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, the court order had legal effect immediately upon being filed on August 11, 2023.

FOR FURTHER INFORMATION CONTACT: Heather Whitlaw, U.S. Fish and Wildlife Service, 9828 North 31st Avenue #C3, Phoenix, AZ 85051; telephone: 602-242-0210; email at incomingazcorr@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or

TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On March 5, 2014, we published in the *Federal Register* (79 FR 12572) a final rule designating approximately 764,207 acres (309,263 hectares) of land in New Mexico and Arizona as critical habitat for the jaguar under the Act (16 U.S.C. 1531 et seq.). The jaguar's critical habitat designation is set forth in our regulations in title 50 of the Code of Federal Regulations (CFR) at § 17.95(a) (50 CFR 17.95(a)). Please see the March 5, 2014, final rule for a complete discussion of previous Federal actions pertaining to this designation.

On July 22, 2021, we published in the *Federal Register* (86 FR 38570) a final rule revising the critical habitat designation for the jaguar in compliance with a different court order to remove Unit 6 and the New Mexico portion of Unit 5 from the designation. In that final rule, we erroneously stated that the rule removed approximately 110,438 acres (44,693 hectares) of land within New Mexico from the designation of critical habitat for the jaguar. On February 2, 2022, we published a correction in the *Federal Register* (87 FR 5737); the correction stated that the July 22, 2021, rule removed 59,286 acres (23,993 hectares) in New Mexico from the designation of critical habitat for the jaguar.

Background

In 2016, we issued a biological opinion, as required under the Act (16 U.S.C. 1536), regarding the development of a copper mine by the Rosemont Copper Company (Rosemont) on lands administered by the Coronado National Forest. The action area of the proposed mine and associated infrastructure included portions of the critical habitat designation for the jaguar, specifically portions of Unit 3 and Subunit 4b. In our

biological opinion, we found that the proposed mine was not likely to jeopardize the continued existence of the jaguar or result in the destruction or adverse modification of its critical habitat.

On September 25, 2017, the Center for Biological Diversity filed a lawsuit against the Service and the U.S. Forest Service. The Center for Biological Diversity alleged that we violated the Act and the Administrative Procedure Act (APA; 5 U.S.C. 551 et seq.) in concluding that the mine would not destroy or adversely modify the designated critical habitat. Rosemont intervened and filed a crossclaim challenging the March 5, 2014, final rule's designation of Subunit 4b and a portion of Unit 3 in the Santa Rita Mountains as critical habitat for the jaguar. On February 10, 2020, the Arizona district court denied in part and affirmed in part the Service's critical habitat designation. As part of its decision, the district court found that we erred in designating Unit 3 as occupied critical habitat but granted summary judgement in favor of designating Unit 3 and subunit 4B as unoccupied critical habitat.

Rosemont appealed the district court decision to the U.S. Court of Appeals for the Ninth Circuit. On May 17, 2023, the appellate court affirmed in part and reversed in part the decision of the district court and remanded the relevant portions of the jaguar critical habitat rule for proceedings consistent with its decision. See *Ctr. for Biological Diversity v. U.S. Fish and Wildlife Serv.*, 67 F.4th 1027 (May 17, 2023), which is available in Docket No. FWS-R2-ES-2023-0215 on <https://www.regulations.gov>. Upon remand, on August 11, 2023, the Arizona district court ordered the Service to vacate a portion of Unit 3 and all of Subunit 4b as critical habitat. This rule implements the district court's August 11, 2023, order.

Administrative Procedure

This rulemaking is necessary to comply with the August 11, 2023, court order remanding to the agency to vacate the critical habitat designations challenged by

Rosemont. Therefore, under these circumstances, the Service Director (Director) has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are impracticable and unnecessary. Because the court order had legal effect immediately upon being filed on August 11, 2023, the Director has further determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective immediately upon publication.

Effects of the Rule

This rule is an administrative action to remove approximately 64,797 acres (26,222 hectares) of land within Arizona from the jaguar’s critical habitat designation at 50 CFR 17.95(a).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Amendment

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend § 17.95, in paragraph (a), in the entry for “Jaguar (*Panthera onca*)”, by revising paragraphs (5) and (6), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

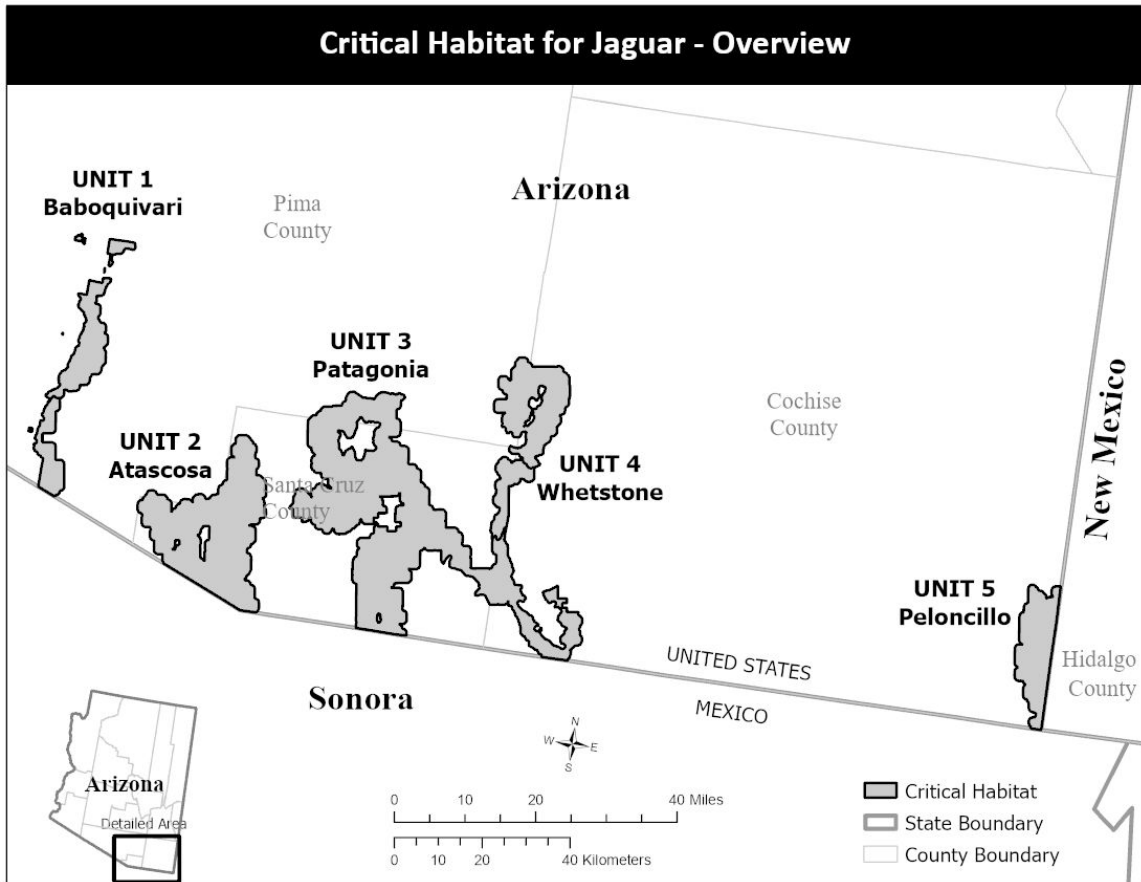
(a) * * *

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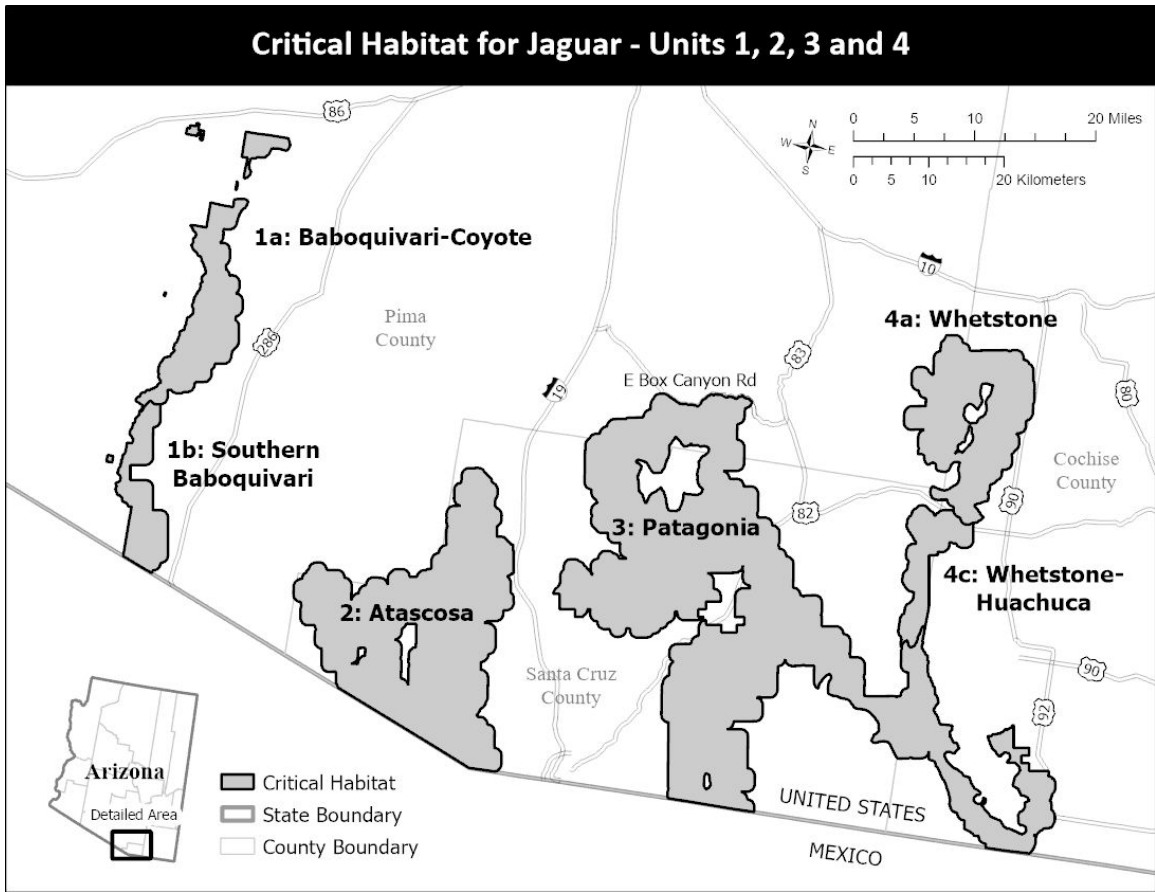
Jaguar (*Panthera onca*)

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(5) Note: Index map follows:



(6) Units 1, 2, 3, and 4: Baboquivari, Atascosa, Patagonia, and Whetstone Units, Pima, Santa Cruz, and Cochise Counties, Arizona. Map of Units 1, 2, 3, and 4 follows:



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Martha Williams,
Director,
U.S. Fish and Wildlife Service.

[FR Doc. 2024-11758 Filed: 5/29/2024 8:45 am; Publication Date: 5/30/2024]